particle which comprises both an intact viral coat protein and a fusion protein comprising the coat protein and a foreign protein. The Examiner next alleges that:

> [s]uch a virus particle is only possible when the particle comprises a genome comprising a coat protein gene linked to a heterologous protein gene by a leaky stop codon, i.e., readthrough sequence. As the result of such a leaky stop codon, both the native coat protein (as the result of the function of the stop codon) and the fusion protein (as a result of the leakiness of the stop codon) would be produced, resulting in the virus particle of instantly claimed 17 and claim 16 of Hamamoto et al. Thus, claim 16 of Hamamoto et al and instantly claimed 17 inherently comprise the readthrough sequence of the other Hamamoto et al claims. Such a readthrough sequence is only afforded the effective filing date of 14 October 1994 in the instant application, which is more than one year after the effective filing date of Hamamoto et al. (Paper No. 11, page 2,)

Applicants respectfully traverse the Examiner's 102(e) rejection.

The effective filing date of Hamamoto et al. is not the PCT filing date

In the first Office Action, the Examiner asserted that the effective filing date of Hamamoto et al. is March 31, 1993--the filing date of the PCT application. This is incorrect. The effective filing date of Hamamoto et al. is November 30, 1994. The cover page of Hamamoto et al. Patent No. 5,618,699 clearly indicates that both the § 371 date and the § 102(e) date is November 30, 1994. The Examiner has already determined that Applicants' are entitled to an effective filing date of October 14, 1994 for the purpose of claiming readthrough sequences. Thus, even if Hamamoto's claim 16 "inherently comprises the readthrough sequence of the other Hamamoto et al claims", nevertheless Applicants have an earlier effective filing date. Accordingly, the Examiner's rejection under 35 U.S.C. 102(e) is legally improper, and Applicants request that it be withdrawn.

The Examiner's interpretation of the issued claim is legally improper and technically incorrect.

Applicants do not acquiesce as to the legal propriety or technical correctness of the Examiner's interpretation of Hamamoto's claim 16, and for the sake of completeness, arguments are herewith presented.

Applicants respectfully submit that the Examiner's interpretation that Hamamoto's claim 16 "inherently comprises the readthrough sequence of the other Hamamoto et al claims" is both legally improper and technically incorrect. Applicants respectfully refeer the Examiner to MPEP § 2301.01, which states in relevant part:

> In determining whether an interference is necessary, a claim should be given the broadest interpretation which it reasonably will support, bearing in mind the following general principals:
>
> (A) The interpretation should not be strained
> (B) Express limitations in the claim should not be ignored nor should limitations be read therein;
> (C) Before a claim (unless it is a patented claim) is considered as the basis for the count of an interference, the claim should be allowable and in good form. No pending claim which is indefinite, ambiguous or otherwise defective should be the basis for a count of an interference;
> (D) A claim copied from a patent, if ambiguous, should be interpreted in the light of the patent in which it originated for purposes of determining whether a party has a right to copy a claim; (emphasis added)

Thus, the MPEP is clear on this issue--an Examiner contemplating an Interference proceeding is simply not allowed to read a limitation into a claim if that claim is unambiguous. In the present case, the wording of Hamamoto's claim 16 is very clear and unambiguous. As put by the Examiner:

> Claim 17 of the instant application is drawn to a virus particle which comprises both an intact viral coat protein and a fusion protein comprising the coat protein and a foreign protein. (Paper No. 11, page 3, 2nd paragraph)

With the wording of this claim so clear and unambiguous, the MPEP prohibits the Examiner from reading any limitation into it.

Additionally, as a matter of policy, and in all fairness to Hamamoto et al., the Patent Office should not be read a limitation into their issued claim without Hamamoto et al. having the opportunity to present counter-arguments to the Patent Office in the proper setting--i.e., an Interference proceeding.

Even assuming, *arguendo*, that the wording of Hamamoto's claim 16 is somehow ambiguous, Applicants respectfully disagree with the Examiner's technical assertion that:

> Such a virus particle is only possible when the particle comprises a genome comprising a coat protein gene linked to a heterologous protein gene by a leaky stop codon, i.e., readthrough sequence. (*Id.*, emphasis added)

Applicants submit that prior to Hamamoto's effective filing date, there were other possible ways to produce the virion of Hamamoto's claim 16 besides using a readthrough sequence. For instance, Holt and Beachy, *Virology* 181: 109-117 (1991) (copy attached), among others, showed that a chromosomally-integrated transgene coding for a tobamovirus coat protein gene is capable of producing functional coat proteins fully competent for viral assembly. In retrospect, then, it would have been possible to infect a transgenic plant having a chromosomally-integrated coat protein coding sequence with a viral vector comprising a coding sequence for a coat protein fusion protein as taught by Applicant's parent application Serial No. 07/310,881 (filing date February 17, 1989), in order to produce a virion particle comprising both a coat protein and a coat protein fusion protein.

CONCLUSION

To summarize, the wording of pending claim 17 is clear and unambiguous--a virion comprising a coat protein and a coat protein fusion protein. The MPEP expressly prohibits an Examiner from reading a limitation into such an unambiguous claim. Furthermore, it was technically incorrect for the Examiner to state that a virion comprising a coat protein and a coat protein fusion protein is only possible through use of a read-through sequence. One skilled in the art could have, in retrospect, produced such a virion by infecting a transgenic plant having a chromosomally-integrated coat protein coding sequence, as described in the 1991 publication by Holt and Beachy, with a vector expressing a coat protein fusion protein, as described in parent application 07/310,881, filed February 17, 1989. Finally, even if the Examiner's interpretation of Hamamoto's claim 16 was legally and technically correct, Applicants effective filing date is more than a month prior to the Hamamoto et al. effective filing date, making the Examiner's 102(e) rejection legally improper.

Accordingly, in view of the arguments presented above, Applicants respectfully submit that the Examiner's rejection under 102(e) is improper. Applicants request that the

rejection be withdrawn and that an Interference between the instant Application and U.S. Patent No. 5,618,699 be declared.

Respectfully submitted,

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for Albert P. Halluin 41,612
Reg. No. 25,227

HOWREY & SIMON
1299 Pennsylvania Avenue, N.W.
Box 34
Washington, D. C. 20004-2402
Tel: (650) 463-8100
Fax: (650) 463-8400